

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2009-22511

WALKER L. WHALEY, M.D.

RESPONDENT.

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ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Medicine against Respondent, Walker L. Whaley, M.D., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.

2. At all times material to this Complaint, Respondent was a licensed physician within the state of Florida, having been issued license number ME 25950.

3. Respondent's address of record is 13673 Long's Landing Road West, Jacksonville, Florida 32225.

4. On or about October 6, 2009, Officer Burban of the Neptune Police Department received information that fraudulent prescriptions were being called in to local pharmacies.

5. On or about October 7, 2009, during an interview with Respondent at his office, Respondent stated that he had not authorized several prescription refill requests that had been recently faxed to local pharmacies.

6. While investigating the fraudulent prescriptions, Officer Burban learned that the records for some of the patients for which prescriptions were called in had been located at Respondent's home.

7. On or about November 6, 2009, a search warrant was served at Respondent's primary address.

8. A search of Respondent's master bathroom revealed several stock prescription bottles on the countertop that indicated by the pharmacy tag that they were for "Office Use Only".

9. The medications labeled "Office Use Only" were Temazepam, and Promethazine.

10. Promethazine is drug used to treat allergy symptoms, nausea and vomiting, and pain after surgery. It is also used as a sedative or sleep aid.

11. Temazepam is prescribed to treat insomnia. According to Section 893.03(4), Florida Statutes, temazepam is a Schedule IV controlled substance that has a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical use in treatment in the United States. Abuse of temazepam may lead to limited physical or psychological dependence relative to the substances in Schedule III.

12. When asked about the bottles of medication, Respondent stated that he took the medications for his own personal use.

13. When asked about the for "Office Use Only" designation on the pill bottles, Respondent stated that he paid for the medications and, as a result, felt he had a right to use them.

14. There is no documentation indicating that these medications were prescribed to Respondent by another practitioner authorized to prescribe, dispense, or administer medicinal drugs.

15. Section 458.331(1)(r), Florida Statutes (2009), subjects a doctor to discipline for prescribing, dispensing, or administering any medicinal drug appearing on any schedule set forth in chapter 893 by the physician to himself or herself, except one prescribed, dispensed, or administered to the physician by another practitioner authorized to prescribe, dispense, or administer medicinal drugs.

16. Respondent stated that he took temazepam, which was found in his home and not prescribed by another authorized practitioner for his own use.

17. Based on the foregoing, Respondent has violated Section 458.331(1)(r), Florida Statutes (2009), by administering a scheduled medicinal drug to himself.

WHEREFORE, Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of Respondent on probation, corrective action, refund of fees billed or collected, remedial education, and/or any other relief that the Board deems appropriate.

SIGNED this 9th day of December, 2011.

H. Frank Farmer, Jr., M.D., Ph.D, F.A.C.P.
State Surgeon General


Elana J. Jones

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FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Angel Sanders
DATE DEC 12 2011

Walker L. Whaley, M.D.

CASE NO. 2009-22511

EJJ

PCP: December 9, 2011

PCP Members: Leon, M.D., Zachariah, M.D., & Goersch

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on Notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.